Laws Pertaining to the Admission of Patients to Mental Hospitals Throughout the United States

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LAWS PERTAINING TO THE ADMISSION OF PATIENTS TO MENTAL HOSPITALS THROUGHOUT THE UNITED STATES

By GROVER A. KEMPF, *Medical Director, United States Public Health Service, Associate Director, Mental Hospital Survey*

Appropriate arrangements for quick and comfortable admission of the needy patient to the mental hospital constitute important measures in humane care of the mentally ill.

The legal requirements for admission have had an interesting development from almost no formality before 1872 to the most difficult and harrowing procedures of the early part of the twentieth century that are still present in many States. The mandatory trial by jury to determine sanity or insanity was begun in Illinois in 1872 and spread throughout the United States. It was a typical reaction to false publicity regarding "railroading" normal men and women to insane asylums, who then were alleged to have lost their reason amid the horrors of the asylum. As time went on the morbid attitude toward the State institutions began to change. They became known as hospitals that were no longer to be feared but to be considered more as a haven for the mentally ill, for whom there was increased hope of being returned to society.

State mental hospitals are now generally looked upon with favor by the people of the States, and the more socially minded and interested the citizens are, the better are the hospitals.

The lag between the cultural level and the law is in no field more apparent than in the slow progress of law-making bodies in according relief to the mentally ill.

The way to the mental hospital should be as open as it is to the general hospital. Due regard for the protection of the rights and property of the individual can be, and in some States is, attained without making the institutions less accessible to the mentally ill.

In 1930 the Committee on Legal Measures and Laws to the First International Congress on Mental Hygiene made the following recommendations:

1. Admission to a mental hospital for treatment should be made as informal and easy as the Constitution and laws of the country will permit. To this end, we further recommend that jury trials on the issue of insanity for commitment be abolished; that the presence in court of the patient to be committed be not

required, but within the discretion of the judge; that the voluntary admission of patients who are seeking treatment and who are competent to make such applications be encouraged, and that those countries and States which do not have such laws be urged to adopt them. Laws also should be adopted as speedily as possible for the temporary care and study without formal commitment of patients upon the recommendation of a physician, as well as for provision for the commitment of patients for a period of observation.

2. We recommend that provision be made, wherever it does not now exist, for the release of patients on parole and supervision during a period of convalescence, such patients to be allowed to return to the hospital without further legal proceedings should their condition necessitate return. We recommend further, that provision be established for the discharge of recovered patients without their needing to have recourse to legal proceedings for this purpose.

3. We recommend that provisions be established, along the lines of the Massachusetts (U. S. A.) procedure, for the routine psychiatric examination, before trial, of persons charged with serious crime, and that such examination be made by an impartial body. We recommend further that, in all instances where doubt arises in the mind of the court, provision be made for the examination by an impartial body of the prisoner's mental condition, and, if necessary, for a period of observation in a mental hospital. We make these recommendations as a result of a conviction that only in some such manner can the confidence of the public in the defense of insanity be restored.

4. We recommend that judges be given sufficient discretion to make disposition of prisoners in accordance with findings of abnormal mental conditions not sufficiently marked to constitute legal "insanity," and that means be provided, such as court psychopathic clinics and other means, whereby the court may be properly advised on these subjects.

An analysis of the present laws of the several States is presented here to show the confused attitude toward the person who is mentally ill. The law-makers are slow to relinquish their belief that mental illness is only a legal problem.

No one questions the right of the medical profession to isolate a person suffering from leprosy for the rest of his life. The diagnosis is not decided by a lay jury, but is left entirely to expert physicians. His confinement to a special institution is not questioned. But every man considers himself to be an expert psychologist, and this attitude is reflected very definitely by legislators.

It may be well to ask what is the purpose of legal requirements for admission to a mental hospital. The total reaction may be summed up in the guarantee in the Constitution that no person shall be deprived of "life, liberty, or property without due process of law." There are other reasons, but none more important than the above, with the possible exception of the attitude of the State towards the cost of treatment. The State may take the position that it must prove in court at the time of commitment whether or not the patient or his estate will reimburse the State for the cost of treatment.

As a result of such legal requirements much unnecessary suffering is caused. A man becomes deranged and may be violent in his

actions. The police or sheriff is called and he is taken to the jail, because very few communities have access to a special hospital for the observation of mental patients. He remains there until the legal proceedings are completed, either by a trial in open court or in chambers. He is then returned to jail until arrangements with the State hospital can be made for his admission. When these are completed the patient, usually handcuffed or manacled, is taken to the hospital by the sheriff. This is what actually happens in many sections of the United States, although the introduction and practice for many years of more humane and effective methods in other sections clearly demonstrate how unnecessary and how prejudicial such practices are.

On the other hand, when a person ill with appendicitis, typhoid fever, or other disease requires urgent specialized treatment, the physician may call an ambulance and have the patient taken directly to a general hospital. In such cases Constitutional guarantees are not even considered. Yet there is no medical distinction between mental and physical illness.

The various methods for admission of patients to mental hospitals may be defined under two broad classifications: (1) Nonjudicial methods of admission; and (2) Judicial methods of commitment.

Nonjudicial methods of admission are (1) On voluntary application; (2) On certificate of a health officer; (3) On the certificate of one physician; (4) On the certificates of more than one physician.

Judicial methods of admission consist of commitment by court or commission.

The procedures of commitment may be classified under seven broad categories:

1. Commitment by the court following a mandatory trial by jury (1 State).
2. Commitment by the court with or without a trial by jury at the discretion of the judge, or on demand of the alleged insane person (9 States).
3. Commitment by the court after an examination by 2 or more qualified medical examiners (25 States).
4. Commitment by the clerk of the court after an examination by 2 or more qualified examiners (1 State).
5. Commitment by the court after an examination by a commission in lunacy appointed by the judge (5 States).
6. Commitment by the court after an examination by a commission in lunacy established by law with the judge as chairman of the commission, or as the one who receives the report of the commission and acts upon it (3 States and the District of Columbia).
7. Commitment by a commission in lunacy after an examination by that commission. Such commission is empowered with judicial authority and is independent of the judge of the court (4 States).

Each method of admission to the mental hospital will be discussed in the above order. None of the laws under consideration applies to

a person charged with a criminal offense or to one who is an insane criminal. Some States provide several methods of commitment, for example, New York.

No attempt will be made here to give all details of the laws, but merely enough to show the pattern of method in each State. Any words used in a peculiar sense in the brief synopses of the laws are quoted verbatim from the statutes.

NONJUDICIAL METHODS OF ADMISSION

PROVISIONS FOR VOLUNTARY ADMISSIONS IN THE SEVERAL STATES

By voluntary admission is meant the admission of a patient to a mental hospital upon the written request of the patient himself to the superintendent of the hospital, who retains the right to accept or refuse the patient after an examination.

In 1881 Massachusetts enacted the first law permitting voluntary admission of patients. It was then restricted to pay patients, but now includes all who desire and need institutional treatment. Voluntary admission offers ready access to treatment to a considerable number of patients who are spared the pain and humiliation of prolonged legal procedures. Voluntary admission is not legally provided for in the following 14 States and the District of Columbia:

Alabama	Montana
Arizona	Nebraska
Arkansas	Nevada
Florida	New Mexico
Georgia	North Dakota
Idaho	Tennessee
Louisiana	Wyoming

District of Columbia

The District of Columbia, the seat of the National Government, has not provided for voluntary admission to its mental hospital, one of the best public mental hospitals in the United States. This is an instance of the tardy relinquishing of legal prerogatives.

An analysis of the legal provisions for voluntary admission in the other States is of interest. A written application made directly to the superintendent, without the certificate of a physician, is permitted in 18 States. Three States require the county judge's certificate. Nine States require a physician's certificate. Three States, namely Kentucky, Oregon, and Pennsylvania, require witness of the application by a friend of the applicant. Seventeen States permit admission of the voluntary patient and later decide on the ability of the applicant to pay the cost of treatment.

The time the patient may be held after he has written a request for his discharge varies from 48 hours in Vermont to 30 days in Oregon.

Mississippi has a most peculiar law pertaining to voluntary admissions. The law states that the superintendent may admit a "lunatic" [1] although he has never been adjudged a "lunatic" and detain him, but if he is sane, the superintendent shall act at his peril. Needless to say, there are no voluntary admissions to the hospitals of Mississippi, and so it is in a number of States that have legal authorization for voluntary admissions. For example, Texas does not take voluntary patients because it has no room for them.

Practically all States with voluntary admission laws permit the superintendent to use his discretion about the suitability of the applicant for admission to his hospital.

West Virginia and Oklahoma require the approval of the Central Board of Administration before admission.

A voluntary admission law should meet the following requirements:

1. The written application to the superintendent should be made on a form prescribed by the administrative authorities of the State institutions.
2. A physician's certificate should not be required, although one may be presented by the applicant.
3. The ability of the patient to pay the costs of treatment should be decided by the proper authorities, without the presence of the patient in court, after the patient has been admitted to the hospital. Treatment should not be denied him if investigation shows that private funds are not available.
4. The superintendent should have the power to accept or refuse the patient for admission after an examination. He alone can decide whether or not he has room for the applicant and that the applicant is suitable to be a patient.
5. A minor should be accompanied by a parent or his nearest relative who has reached his or her majority and this person and the minor should sign the application.
6. The superintendent should have authority to discharge the patient within 10 days after the patient has made written application for his discharge. The superintendent should have time to have the patient judicially committed if he deems it advisable to do so and to reach the relatives and summon them to take charge of the patient if he has not recovered.
7. The State should have supervision and licensing of all private institutions that accept mentally ill patients for treatment and the same laws should apply to those institutions.

With the exception of the voluntary application for admission, admission on the certificate of a health officer, and some forms of emergency admission, all other methods require a petition. This is

[1] The term "lunatic," a survival from the days when the moon (luna) was supposed to govern the behavior of the mentally ill, is still retained in many statutes though long discarded in medical nomenclature.

an application for commitment or admission of the alleged insane person sworn to by a person defined in the law and filed with the proper authority.

ON CERTIFICATE OF A HEALTH OFFICER

The legal authority for the health officer to send a patient directly to a mental hospital is a most humane advance in the emergency care of mental patients. The county health officer in many States is readily available in emergencies and much valuable time can be saved in placing the patient under care and treatment. The provision in the law for the superintendent to accept a patient for a certain number of days when he is presented at the hospital with a health officer's certificate on a form prescribed by the State mental hospital administrative board is effective in 7 States.

Kentucky.—Kentucky provides emergency treatment for 10 days on request of the health officer. At the end of 10 days the patient either must be removed by order of the superintendent as being an unsuitable patient for the hospital or the superintendent must notify the judge of the circuit or county court, who then appoints 2 physicians for an examination of the person. Commitment or discharge is at the discretion of the judge. The law requires a bond for payment, 6 months' pay in advance, or proof that the person is a pauper. This law was enacted in 1938.

Missouri.—Missouri has a provision that any indigent person who requires treatment in a mental hospital and who has not been declared insane, but is suffering from a nervous or mental illness, may be admitted to the State hospital for 6 weeks when accompanied by a certificate of diagnosis by the city or county health official.

New York.—New York has a law that provides for treatment in a mental hospital for 30 days. The patient may be ordered by the superintendent to be removed if he is not suitable for treatment. If he requires more than 30 days' treatment, the patient may voluntarily sign an application for longer treatment, or the superintendent may request the health officer to have the patient examined by 1 or 2 qualified medical examiners. If found sane, the patient is discharged. If insane, the superintendent is empowered to hold the patient for 30 days, and in the meantime can have him committed by the judge of a court of record. The costs of examination by the 2 qualified examiners are paid by the town, city, or county on order of the court. The costs of treatment must be paid by the patient, his estate, or relatives (if able); otherwise, the costs are paid as stated above. The decision on the responsibility for payment is made after the patient is admitted.

Ohio.—Ohio has a modified form of procedure in which the health officer can order the patient to be taken to an out-patient hospital if one is available, or to the county jail. The patient can be held without warrant for 5 days in the hospital and not over 12 hours in a city or village jail. He may be held longer in a county jail if proper facilities are provided for the detention of the mentally ill. (An out-patient hospital is defined in the Ohio statutes as any institution established or maintained by the State for the care of the mentally ill.)

Persons with delirium tremens are excluded from admission to the State hospital.

Rhode Island.—Rhode Island authorizes the health office of the Providence health department to submit a written request to the superintendent of the Providence Hospital for emergency treatment of a person not to exceed 15 days. Every such patient must be examined by 2 qualified medical examiners. The superintendent can retain the patient 15 days, discharge him, or have him transferred to the State hospital.

Utah.—Utah provides for emergency admission and treatment of a patient for a period of 10 days upon the written request of a health officer to the superintendent of the State hospital. Every such patient must be examined by 2 licensed physicians and if found to be insane he is committed by order of the court. If the patient is sane he is to be discharged within the 10 days.

Massachusetts.—Massachusetts authorizes the superintendent to admit a patient for 10 days when requested in writing by a physician, member of the Board of Health, sheriff, or member of the State police, selectman, police officer of a town, or an agent of the State institutions' department of Boston. The superintendent is required to have the patient examined by 2 qualified physicians and their report is submitted to the superintendent. If the person admitted is certified to be insane, the superintendent is authorized to retain the patient for a total of 35 days from the time he was admitted. Within the 35 days the superintendent must discharge the patient or request commitment by the judge of the court.

UPON THE WRITTEN REQUEST OF ONE PHYSICIAN WITHOUT A COURT ORDER

The certificate of one physician without a formal court order is sufficient to authorize admission of the patient in only 9 States. This type of admission is usually called emergency admission.

Colorado.—Colorado authorizes admission to the State Psychopathic Hospital only, but no patient can be brought to the hospital against his will except upon order of the court. Also, unless the patient is a voluntary pay patient, the superintendent is required to file a petition in regard to the financial status of the patient and the judge must ascertain whether or not the patient shall pay.

Connecticut.—Connecticut provides for admission of a patient for 30 days upon the written certificate of a reputable physician made within 3 days prior to the admission. Regular commitment must take place within the 30 days if the patient is to be detained for a longer period.

Massachusetts.—Massachusetts State hospitals may receive a patient without court order for 10 days' emergency treatment on the written certificate of one qualified physician or a health officer.

Michigan.—Michigan provides for the admission and treatment of a person for 5 days upon the written certificate of one physician that the person is a resident of the State and is insane and requires detention for the public safety. The certificate is delivered to any peace officer who is required to deliver the person to a hospital or other place of detention.

New York.—In New York State the certificate of one qualified medical examiner, dated not more than 10 days before admission, and a properly executed petition are sufficient for the patient to be admitted to any New

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York State or licensed private hospital, except the special hospitals for the criminal insane.

Pennsylvania.—The superintendent may receive and detain for temporary care for not more than 10 days any person accompanied with a written application to the superintendent made by his guardian, friend, or relative and the written certificate of one licensed physician that immediate care is needed by reason of mental illness. If the person is not a suitable patient for the hospital, the superintendent must order his discharge to the friend or relative who made the application. If the patient requires further care, the person who made the application is required to have the patient committed before the expiration of 10 days. A bond of $500 is required to cover the cost of care and maintenance, or an endorsement by the poor authorities of a county or district must be given to the superintendent.

Rhode Island.—Rhode Island permits admission and treatment of a patient for 15 days in the Providence Hospital or the Rhode Island State Hospital when accompanied by a written request of one licensed physician.

Texas.—Texas authorizes admission of the patient to the State hospital for 10 days, when requested in writing by a physician. After the patient is admitted the superintendent must request an examination by two licensed physicians who recommend either his removal or legal commitment as required by law. The State hospitals in Texas are so crowded that there is a long waiting list, about 250 mentally ill persons are in county jails, and temporary admission is rarely possible.

Utah.—Utah permits temporary admission and treatment for 10 days to a person with one physician's written certificate. The superintendent is required to have two licensed physicians examine the patient and make recommendation for discharge or legal commitment within the 10 days.

UPON THE WRITTEN CERTIFICATE OF TWO PHYSICIANS WITHOUT A COURT ORDER

There are 10 States that require the certificates of 2 physicians under certain conditions.

Delaware.—The petition of the responsible person and the certificate of two physicians is sent directly to the superintendent, who may retain the patient for a period of 30 days. If commitment is required the board of trustees acts as a commission in lunacy with judicial power of commitment. The board appoints a commission of two qualified physicians who determine whether or not the person should be continued under treatment in the State hospital, and the board has the authority to sign the order. If a jury trial is requested the board is authorized to summon a jury of six to determine the question of sanity or insanity. The patient retains the right of appeal to the courts. This is a practical and simple law.

Maine.—Maine provides emergency admission when the patient is accompanied with a copy of a petition or complaint and the certificate of two physicians that the patient requires immediate restraint and detention. The patient must then be legally committed within 15 days. A statement as to the financial ability of the patient or his relatives liable for his support must be furnished to the superintendent.

Maryland.—A person, certified by two qualified physicians after separate examinations within one week of admission, may be admitted to a State hospital. The physicians may neither be related by blood or marriage to the insane person nor connected in any way with the institution to which he is to be admitted.

New York.—In case it would be for the patient's benefit to receive immediate care and treatment, or where there is no other proper place for care and treatment, or if he is dangerously insane so that it is necessary for the public safety that he be confined immediately, the patient may forthwith be admitted to a State hospital or private licensed mental hospital upon a certificate of two qualified physicians and a proper petition. The patient may be retained for 10 days, but an order for court commitment must be obtained within the 10 days unless he is discharged or admitted under the provision approving admission on the certificate of one physician. The superintendent may refuse the admission of the patient if he considers him not to be in need of emergency treatment.

New Jersey.—A written statement of two licensed physicians that the alleged insane person should be placed in immediate restraint and that a temporary court commitment could not be obtained because of the emergency will authorize the superintendent to admit the patient, and the written statement serves as a warrant. Copies of the statement are mailed to the county adjuster who presents them to the judge to obtain an order of temporary commitment of 20 days. This order is sent to the superintendent. The judge fixes a time for a formal hearing to be held within 20 days.

North Carolina.—The superintendent of a mental hospital is authorized without personal risk of legal liability to admit and detain a person for 20 days upon the written statement of two licensed physicians that the person is insane. The physicians may not be connected in any way with the hospital or related by blood or marriage to the patient, the wife, husband, or guardian.

Pennsylvania.—Pennsylvania has a law for admission on application when there is no real emergency for the treatment of the patient. The requisites are a written application by a responsible person and the written certificate of two qualified physicians that the person is mentally ill and in need of treatment and care in a hospital. A bond of $500 or the endorsement of the poor authorities is required at the time of request for admission. The person must be admitted within two weeks of the date of the certificate, and the physicians must certify that they have examined the patient within a week of the signing of the certificate. The procedure for detention, treatment, and discharge is the same as that already outlined where patients are admitted upon the written certificate of one physician.

The laws of Pennsylvania are interesting in that the words insane and insanity appear nowhere in the statutes pertaining to mental hygiene. "Mentally ill" or "mental illness" are used instead.

South Carolina.—The superintendent may, without a court order, receive and detain for 10 days any person whose condition is certified by two licensed physicians to be one of dangerous and violent insanity or who for other reasons is in urgent need of treatment. A written application by the nearest relative, friend, or guardian is required. The patient must be legally committed within 10 days, or be removed by the person who applied for his admission.

Utah.—The superintendent may receive a patient without a court order and detain him for 5 days when accompanied by a signed application of a relative or guardian and also a legal certificate signed by two licensed physicians that the patient is a case of violent or dangerous insanity. The certificate must be filed with the court and, if requested by the applicant or one of the physicians, the sheriff must arrest the person and deliver him to the superintendent. The applicant must within 5 days cause the patient to be committed or to be removed from the hospital.

Virginia.—A person who is in a violent or dangerous insane condition so that public safety is endangered, or who, for his own safety, requires immediate

hospital care, may be admitted by the superintendent without court order upon the written petition of a responsible person and the certificate of two qualified physicians. Court commitment must be obtained within 5 days, or else the patient must be removed within 10 days.

INCOMPLETE COURT COMMITMENT

Admission on incomplete court commitment is distinguished only by the fact that such cases are considered to be in a violent or dangerous condition and require immediate hospitalization to keep the patient from being sent to a jail. New York State specifically classifies this type of admission under the above title.

SUMMARY

The late Dr. Frankwood E. Williams [2] summarized the beneficial results of voluntary and temporary commitment laws as follows:

1. They tend to express in legal form the modern conceptions of mental disease; and without endangering the personal liberty of any individual;
2. They at the same time emphasize the patient's cause as a patient;
3. They make it possible to provide early treatment, which is the most hopeful treatment;
4. They afford protection to the patient both from himself and from unprincipled members of the community quick to take advantage of his illness;
5. They afford protection to the family and community against the acts of the patient;
6. They obviate in a large number of cases the delays, legal exactions, semipublicity, and stigma of having been declared insane;
7. They remove the hospitals from the isolation they have suffered in the community and make it possible for them to take their place as hospitals in fact as well as in name, a more integral part of the social fabric;
8. They make possible a wider cooperation between the hospitals and the lay and the medical public, which will yield to the Commonwealth that supports them a greater usefulness;
9. And finally, by means of a wider understanding of the more fundamental facts in regard to mental disease on the part of physicians, cooperating with the hospitals, through the more frequent use of these laws it may be possible to prevent certain forms of mental disease.

Another most important practical result has been mentioned by Deutsch.[3] Such laws also avoid the need for confining mental patients in lock-ups and jails while waiting for the court to act.

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[2] Legislation for the insane in Massachusetts, with particular reference to the voluntary and temporary care laws. By Frankwood E. Williams. Boston Medical and Surgical Journal, vol. 173, No. 20, November 11, 1915.

[3] The Mentally Ill in America; a History of Their Care and Treatment from Colonial Times. By Albert Deutsch. Doubleday, Doran and Company, Inc., New York. 1937. (P. 60.)

A review of the laws of the States reveals that only the following 18 States provide for some form of temporary or emergency admission without court order:

Colorado	New York
Connecticut	North Carolina
Delaware	Ohio
Kentucky	Pennsylvania
Maine	Rhode Island
Maryland	South Carolina
Massachusetts	Texas
Missouri	Utah
New Jersey	Virginia

The most satisfactory laws are those of Delaware, New York, and Rhode Island.

Delaware's simple laws covering all the provisions included in the various legal classifications of other States is the most practical and effective legal arrangement yet devised for prompt admission for observation and continued treatment.

New York's law providing for the admission of a patient upon the proper petition and the certificate of one qualified physician permits a patient to remain in the hospital for an indefinite period for treatment unless he, or any person in his behalf, makes written request for release.

Rhode Island provides for the admission to the psychopathic ward of Providence Hospital for 15 days' observation and treatment of any person who is certified by a physician, police officer, or officer of the health department to be in need of treatment.

RECOMMENDATIONS

An emergency or temporary commitment law should be enacted by every State that is now without such provision. The present laws should be improved to include the following requirements:

1. The law should specifically state that any person who, in the opinion of two qualified physicians not related by blood or marriage to the person, is mentally ill and is in need of treatment in a hospital legally established for the care and treatment of the mentally ill shall be admitted to the hospital upon presentation of the patient to the hospital with a verified petition from a responsible relative or friend of the patient and a certificate signed by the two qualified physicians. The patient should have been examined within 7 days of the signing of the certificate and presented at the hospital within 2 weeks of the signing of the certificate.

2. The superintendent should be authorized to retain the patient for an indefinite period unless he or someone in his behalf signs a request for his release. When this request is signed and the superintendent is of the opinion

that the patient is in need of further hospital treatment he should be required to request court commitment of the patient within 7 days after the written request for release is made.

3. The superintendent should be authorized to discharge the patient or grant his release on visit at any time he considers it advisable to do so. The superintendent of the hospital to which the patient is to be taken should be asked beforehand whether or not there is a vacancy for the patient.

4. The question of the financial status of the patient should be answered after the patient has been admitted to the hospital.

The present legal requirement in practically all States to guarantee payment before the patient is admitted or committed is one of the barriers against early treatment of a patient.

As a matter of fact, only 10 percent of the patients in the State hospitals in New York and 9 percent in Massachusetts, for example, are paying patients. The law could well dispense with this requirement of guarantee of payment at the time of admission or commitment. The law can well state that when the person or his estate or his wife, husband, father, mother, son, or daughter is financially able to pay for the costs of the treatment, the State shall be empowered to collect the costs. But the investigation to ascertain his financial ability to pay will not require the presence of the patient in court before admission or within 30 days after admission to the hospital, and then only in the discretion of the judge of the court.

JUDICIAL METHODS OF ADMISSION

ON COMMITMENT BY COURT OR COMMISSION

Court commitment.—By court commitment is meant the written order of a judge of a court of record to confine a patient with mental illness to a special hospital for the treatment of mental illness, or to a jail or other place of safekeeping. Court commitment throughout the United States has five fundamental requirements: (1) a petition; (2) notice; (3) hearing; (4) certificate; (5) commitment order.

The petition, application, affidavit, or statement is a document prescribed by State law. Its form usually is prepared by the central hospital administrative authority or by the court. This document is properly completed, signed and sworn to by the nearest relative, friend, guardian, reputable citizen, justice of the peace, or county commissioner, and filed with the designated authority.

The District of Columbia requires two or more responsible persons to sign the petition.

Florida has the peculiar requirement that the petition must be signed by five reputable citizens, not more than one of whom may be a relative of the person, and all must know the person sufficiently well to justify their belief that the person is insane. This is an unwarranted hardship on the patient and his relatives, but reveals the old fear of sending a sane patient to an asylum.

Notice.—The formal notification by the judge to the person requiring hospital treatment that he is alleged to be insane is a legal

requirement in setting a date for a hearing and offering opportunity to the person to defend himself in court against the charge that he is of unsound mind. It is legally a warrant of arrest and summons to appear. The law should permit the judge to use his discretion in dispensing with notice to the person, or in notifying instead his relative, friend, or guardian.

Hearing.—After the petition has been filed the next step is a hearing, trial, or inquisition. These are terms used in the statutes of different States. The notice is so inextricably interwoven with the hearing that it is discussed with that topic.

1. THE MANDATORY JURY TRIAL (THE JUDGE HAS NO POWER TO CHANGE THE VERDICT OF THE JURY)

A jury trial is mandatory in Mississippi. Until June 1938 in the District of Columbia, no patient could remain in St. Elizabeths Hospital longer than 30 days without commitment by a jury of 12 in the District Court.

Mississippi.—After the "writ of lunacy" has been filed with the clerk of the court, the clerk must direct the sheriff to summon the alleged lunatic and six freeholders. The jury makes inquiry and submits a report to the clerk. If the majority of the jury adjudge the person to be insane and that he should be confined, the clerk is required to direct the sheriff to arrest him and place him in a hospital if there is room for him, or to confine him in the county jail until there is room in the hospital.

If the person is an idiot, fool, or other incurable, but harmless and indigent, he is sent to the county home.

Texas.—Perhaps Texas should be added as a second State that requires a mandatory jury trial because no person can be treated in a mental hospital for more than 90 days without commitment by jury.

Court commitment: The petition is filed with the county court. The judge requests the certificate of two licensed physicians after personal examination unless the petition is accompanied by the physicians' certificate. The judge issues a warrant for the person's apprehension. A justice of the peace may issue a warrant, but it is returnable to the county court. The hearing may be held in court or at the person's residence or any other place where the judge deems best. Notice is given the person 3 days before a hearing. The judge is required to call a jury of six competent jurors for the hearing.

Ninety-day commitment: The judge may send a person, after the petition and certificate of two physicians is filed with him, to a hospital for 90 days. A hearing is held wherever the judge deems best for the person. The two physicians must swear that they believe the person to be mentally ill and in need of hospital treatment. The commitment papers and the financial property statement are sent to the board of control. The board authorizes the superintendent to hold the patient for 90 days.

2. COURT HEARING, WITH OR WITHOUT A JURY, DEPENDING ON THE JUDGE

Alabama.—When a petition is filed with a judge of probate, he is required to investigate the case by examining witnesses if he sees fit and if satisfied that the case is a suitable one he must then apply to the superintendent of a

hospital for the person's admission. The superintendent replies in writing to the judge stating whether or not there is room for the person. If there is room, the judge then must call witnesses of whom at least one must be a physician and investigate the facts with or without a jury and with or without the presence of the person in court. The judge is obliged to make application to the superintendent in advance of the hearing.

Practically all mentally ill persons must spend some time in jail before the hearing, or while awaiting admission to a hospital.

The financial position of the person is examined at the time of the trial or hearing.

District of Columbia.—The law enacted in June 1938 is a departure from the mandatory jury trial. A jury trial may be ordered by the court on its own motion, or when demanded by the person alleged to be insane.

Illinois.—A statement is filed with the county court. One physician must witness the statement. If no physician is available to the applicant, the judge may appoint one and authorize the payment of a fee of $5.

The court then sets a date for a hearing and directs the sheriff to bring the person to court at that time, unless it appears by affidavit of the physician that it would be improper to bring him.

The judge orders an inquest by a commission of two physicians or a trial by a jury of six persons, one of whom must be a physician.

When the judge decides that a jury is not necessary, or one is not demanded, he appoints two physicians to examine the patient and make a written reply to a set of questions. The jury of six, if one is called, makes a written reply to the same set of questions. The inquest may be held in open court, in chamber, or in the home of the person, and the judge must preside and the person be present.

After the inquest the judge may discharge the person, remand him to his friends, or commit him to a hospital.

Kansas.—A statement is filed with the judge of the probate court. Two witnesses must be named and the certificate of one physician is required, or the judge may appoint a qualified physician of the county where the person resides to examine the person. The physician is entitled to a fee of $5.

The judge then issues a writ commanding the person to be brought before him in court for a hearing unless the physician's certificate states that the person's physical or mental condition is such that it would be improper to bring him to court. The inquest is made by a jury or a commission in the discretion of the court. But when a jury trial is demanded by the person, or someone in his behalf, a jury trial must be held.

If the judge decides on a commission, he appoints two qualified physicians to make a personal examination and file a report with the judge.

The inquest may be held in open court or in chamber or at the home of the person. The probate judge must preside and the person must be present.

If a jury trial is held, the jury consists of four persons, one of whom must be a reputable physician. The person alleged to be insane must be present and represented by counsel. There may be present the person's immediate friends and medical advisor. All other persons may be excluded. The judge must abide by the decision of the jury and commit the patient, discharge him, or remand him to his friends or relatives for care.

At the time of the inquest, by jury or commission, the pecuniary condition of the patient and of his relatives, who are bound to support him, is established. The judge designates him as a county or private patient.

Kentucky.—A petition is filed with the judge of the circuit court, or, if the circuit court is not in session, with the county court. An inquest must be held at a regular term of court.

The court appoints an attorney to represent the person, and it is the duty of the attorney to prevent the finding of any person of sound mind to be of unsound mind.

The judge may call a jury on his own motion, or conduct the inquest in chamber. The alleged insane person may demand a trial by jury.

In case of no jury trial the judge appoints two physicians, who are special students of mental disease, to examine the person and certify their findings to the court.

The person must be present in the court during the inquest unless the physicians certify that the person's condition is such that it would be unsafe for him to appear. The judge or the accused may subpoena witnesses.

The jury must determine two matters. First, whether the person is a lunatic and, second, whether the person has any property, or if there is any person liable for his support.

In the case of the medical commission the state of the person's mental condition is certified. If the person is insane and has an estate, the court appoints a guardian.

The judge commits the person to a State hospital, private institution or to a guardian.

Maryland.—The county commissioners may receive the complaint that a person is alleged to be a lunatic and that he has no estate and no one liable and able to support him. The commissioners request the examination of the person by two qualified physicians. The county commissioners may order the person to be sent to the almshouse, the State hospital, or some other place suited to his condition and there confined until he is recovered or discharged. If a jury trial is demanded by the person, his relatives or friends, or by the county commissioners, then the circuit court or the criminal court of Baltimore is required to call a jury of 12 to make inquiry into the person's condition. The commissioners assign the patient to a hospital if he is adjudged insane.

The court may also receive the application of a trustee of a person *non compos mentis* and, after the necessary proof, send the person to any hospital in the vicinity of Baltimore to remain there until further order of the court.

Massachusetts.—An application is filed with the judge of a superior court in any county, a probate judge of Suffolk County and Nantucket County, or the judge of the district court, except the municipal court of Boston. The certificate of two reputable physicians that the person is insane is required. The judge must see the person or state in his court order why it was not advisable to do so.

The judge may hold a public hearing, or call a jury, summon witnesses and issue a warrant for the person to be brought before him.

All patients detained in a mental hospital for more than 35 days for observation must be legally committed when longer treatment is indicated.

Michigan.—A petition is filed with the probate court. The court must fix a day for a hearing and appoint two physicians to make an examination. The report of the two physicians must be filed with the court before the hearing. Notice is served upon the person, the petitioner, and the nearest relatives. The court institutes an inquest and takes proofs and fully investigates the facts.

If the court considers it necessary, or if the parties so demand, a jury of six is called. The person need not appear if the medical certificate states it in-

advisable to do so. The financial status of the person is ascertained at the hearing; the judge makes the decision.

Missouri.—The statement is filed with the county clerk. The clerk notifies the person of the hearing. The judge of the county court may issue a warrant to apprehend the person and confine him in a suitable place pending the hearing.

The hearing is held before the court or the judge may order a jury. At least one witness or juryman must be a physician. The judge appoints counsel to the person if the person has none.

If the judge holds a hearing his opinion of the person's mental condition is final, but if there is a jury trial the judge must abide by the verdict of the jury.

New Jersey.—The application and the certificate of two licensed physicians are filed with the county adjustor who presents them to the judge of the common pleas court. A notice is served on the person for a date of hearing. The notice must state that the person may appear personally or be represented by his attorney to oppose the allegation of insanity. The superintendent of the hospital where the patient may be confined must assist the person to appear or may certify that it would injure the person's health to appear. Notice is served on the nearest relative if possible.

The judge may decide without a jury or he may call a jury.

The judge may continue the hearing, but not to exceed 3 months. During this time the person may be kept in a hospital.

The judge also inquires into the person's legal residence and financial condition if the decision is reached that he is insane. The judge names the hospital to which the person is to be committed.

All patients, except voluntary cases, remaining in a hospital over 20 days must be legally committed.

3. COURT HEARING WITHOUT A JURY WITH AN EXAMINATION BY 2 OR MORE PHYSICIANS (THE DISCRETION OF DISCHARGE OR COMMITMENT IS LEFT TO THE JUDGE)

Arizona.—After the petition is filed with a judge of the superior court, he must order the person to be brought before him for a hearing and examination. He is required to inform the person in open court of the charge of insanity and of his right to secure witnesses and defend himself by counsel. If no counsel appears the judge must appoint one. A time for the examination is then set and witnesses acquainted with the accused are summoned, together with two or more physicians, to be present at the examination. A personal examination of the patient is required. The judge renders the verdict of sanity or insanity and either discharges the person or commits him to the hospital. At the time of the trial the court inquires into the financial position of the person if the person is to be sent to the State hospital.

Most of the mentally ill in this State must of necessity spend some time in jail before admission to a hospital.

Arkansas.—After the petition is filed with the court the judge is required to set a time for the hearing of testimony. He requests a separate examination by two reputable physicians who submit a written report on a prescribed form.

The judge makes the decision whether or not the person is insane and, if so, sends a copy of the proceedings to the superintendent of the hospital. The superintendent notifies the judge whether or not there is room for the patient. If there is no room the superintendent enters the person's name to have preference on a waiting list. If the person is in a violent condition the judge may order him to be confined in the jail.

California.—When the petition is filed with a magistrate of a county, the magistrate issues a warrant to a peace officer to apprehend the person and bring him before the judge of the superior court for a hearing. The judge informs the person of the charge and his right to make a defense and produce witnesses. If the person is too ill to appear in court, or if a physician certifies that it would be detrimental to the person's physical or mental health to appear, the judge may hold the hearing at the bedside. The judge directs two medical examiners to make a personal examination of the person and then personally to testify as to the result of their examination. The judge decides whether the patient should be sent to a hospital, remain at home, or be released. The person's financial condition is investigated at the time of the hearing.

Connecticut.—When a written complaint that a person is alleged to be insane is filed with the judge of probate he sends a formal notice of the charge of insanity to the alleged person. The judge may issue a warrant to bring the person before him. If, upon examination, the judge considers the person to be in a dangerous condition he may order his restraint and custody pending the proceedings. The court requires the testimony of at least two reputable physicians, not related to the patient by blood or marriage, who have examined the person within 10 days.

The judge decides whether or not the person should be committed.

When the judge of a superior court receives a written complaint he appoints a committee of a physician, an attorney, and one other person, who make an investigation and examination and then submit a written report to the judge of the superior court. The judge must confirm the opinion of this committee to discharge the person or commit him.

Florida.—A petition is filed with the judge of the county or circuit court by five reputable citizens, not more than one of whom is related to the person and all must know the person sufficiently well to justify their belief that he is insane.

The judge then appoints a committee of one intelligent citizen and two practicing resident physicians of good standing. This committee makes a thorough examination of the person to determine his mental and financial condition. A written report is submitted to the judge, and the judge decides whether or not to commit or release the patient.

The person may petition the court for permission to contest the charge, and the court then sets a date for a hearing. If the person is indigent, the court may summon witnesses in his defense.

Idaho.—A petition is made to a county magistrate who issues a warrant to a peace officer to arrest the alleged person and take him before any judge of a court of record in the county for examination. The judge cannot proceed until the person is represented by an attorney and the judge may appoint an attorney to act as counsel for the person. The judge subpoenas two or more witnesses and at least one graduate of medicine. The physician must hear the testimony and make a personal examination of the alleged insane person and report to the judge.

The decision to release or commit the patient is left to the discretion of the judge.

Indiana.—The statement is filed with the judge of the superior or circuit court, together with the certificate of a reputable licensed physician who has examined the patient. The judge then appoints two reputable licensed physicians who are not related to the patient by blood or marriage and one of

whom shall not be the same physician who filed his certificate with the statement. They examine the patient separately and certify their reports to the judge of the court.

The judge then sets the date for a hearing and directs the sheriff to notify the person; the judge may subpoena the person filing the statement, and others.

After the hearing the judge makes his decision and issues a commitment order if he deems it necessary.

The clerk of the court requests the superintendent of the hospital for admission of the person. If there is no room at the hospital, the clerk of the court directs where the patient shall receive treatment or custody. The person can be sent to jail only on the direct order of the judge. The judge may order the person to be confined to jail pending the hearing, or otherwise, if the person is dangerously insane.

Louisiana.—A complaint is filed with the judge of the district court, who issues a warrant ordering the person to be brought before him. He also summons two licensed and reputable physicians, one of whom must be the coroner, and the other the personal physician of the suspected person, if he has any. Neither physician may be related to the person by blood or marriage. The judge and the physicians constitute a commission to examine the person. Witnesses may be summoned. The physicians are required to make an examination of the person in the presence of the judge and, if they disagree, the judge has the power of decision.

The judge issues the order of commitment.

Maine.—The municipal officers of a town constitute a board of examiners to receive a petition and hold a hearing.

The board requires the evidence of at least two reputable physicians based on inquiry and personal examination.

If the board of examiners neglects to act within 3 days after the complaint is filed, a second complaint may then be made and filed with two justices of the peace and they are required to proceed in the same manner as a board of examiners.

The board has the power to commit the patient and also examine into his financial condition.

The judge of a probate court has jurisdiction to examine alleged insane persons who are not minors. Upon the receipt of a written complaint and the certificate of a reputable physician he is required to hold a hearing. The person is notified to appear and the judge may summon witnesses. The judge decides the case and orders a commitment or discharges the person.

Minnesota.—The petition is filed with the county court. The court may, if so determined, direct the sheriff or other person to apprehend the alleged insane person and confine him for observation and examination in any hospital or institution consenting to receive him.

The person is formally notified of the date for a hearing and examination. If he has no attorney the judge may appoint counsel. If he is an obvious case, or the county attorney consents in writing, the examination may be made by the judge of the court. Otherwise, the judge appoints two licensed doctors of medicine to assist in the examination. The examiners and the judge report their findings to the board of control. The court also ascertains the extent of the patient's property. If the judge decides that the person is insane he issues a warrant to the sheriff committing the patient to a hospital.

Montana.—Whenever it appears to the satisfaction of a magistrate of the county that a person is so disordered in his mind as to endanger health, per-

son, or property, he must deliver a warrant to a peace officer who shall arrest the person and take him before a district judge for examination. If the judge is absent, the person is taken before the chairman of the board of county commissioners.

Witnesses are subpoenaed and also two graduates of medicine. The physicians certify their report in writing. If the judge or the board believes the person to be insane, a warrant confining the person to an asylum must be issued.

Nevada.—The application is filed with the judge of the district court who orders the person to be brought before him. He calls witnesses and two or more licensed physicians to examine the alleged insane person. A written report is submitted by the physicians and, if the judge is satisfied that the person is insane, he issues an order that the person shall be taken to a hospital. The question of financial support is settled by the judge. If the district judge is away the county clerk must act in his place.

New Hampshire.—The application is filed with the judge of the probate court. The judge must have the person examined by two reputable physicians with or without notice to the person. The examination must be held within a week of the committal. There must also be a certificate from the judge of the superior or probate court, mayor, or selectman, stating that the signatures are genuine and that the signers are persons of responsibility.

The commission of lunacy determines the ability of the person or his relatives to pay for hospital care.

New Mexico.—The district judge grants certificates to two licensed physicians in each county who have had 5 years' practice. These physicians are known as "medical examiners" and there must always be two in each county.

An application is made to a magistrate of the county who issues a warrant to a peace officer to have the person brought before the district court for a hearing. Pending the hearing the district court may order the person in custody.

If the person is too ill to appear, the hearing may be held at his bedside. Notice of the hearing is served on the person's relatives.

The judge must call at least one medical examiner who must hear the witnesses and examine the person. The individual who filed the application must be examined as a witness.

The judge decides whether or not the person is insane and, if so, commits him to the asylum.

The judge or the patient or any friend of the patient may request a special committee of not less than three or more than five alienists to examine the person and report to the court. If a majority of this commission finds the person to be insane the judge must so adjudge and issue an order for commitment.

New York.—Court commitment after admission on a physician's certificate is not necessary unless the person, or anyone in his behalf, makes a written request for his release and the superintendent deems that further treatment is necessary.

Court commitment requires the petition and the certificate of two qualified examiners to be filed with a court of record of the city or county, or with the supreme court. Notice is given to the alleged person, unless it appears to the judge that the personal notice would be ineffectual or detrimental to the person. He may also dispense with it when the examiners certify that the notice would be detrimental. Notice is then given to the nearest relative or friend of the person or to the one with whom he resides.

If no demand is made for a hearing the judge may determine the question of insanity forthwith and, if satisfied, commit the person to an institution. The judge may order the person to the custody of friends, relatives, or a committee when such are willing and able to care for the person at some other place. The judge may require additional proof besides the petition and certificate.

Upon the demand of a relative or friend or upon his own motion the judge may order a hearing. The proper parties are notified and testimony is heard with or without the presence of the person in court. If the judge decides that the person is insane, he must commit the person to a hospital or make such order as stated before. The judge may direct a referee to hold the hearing and make a report.

When the judge refuses to commit the person he is required to state his reasons in writing.

If the commitment is to a State hospital, the order must be accompanied by a written statement of the financial condition of the person and those liable for his support.

When the person or someone on his behalf is dissatisfied with the order of commitment, he may obtain a rehearing and review upon a petition to a justice of the supreme court who shall call a jury to try the fact of insanity. If the petition is filed by someone other than the person or his near relative or the one with whom the person resides a bond must be filed to guarantee the payment of costs of the trial. The judge must abide by the verdict of the jury and discharge the person if he is declared sane or commit him if insane. (In over 12,000 admissions to the State hospitals in 1937, there was no jury trial for commitment.)

A qualified medical examiner is a reputable physician who is a graduate of an incorporated medical college, licensed to practice in the State and who has practiced medicine for at least 3 years. He must have a certificate from a judge of a court of record that he is qualified.

Ohio.—An affidavit is filed in the probate court. The court issues a warrant to the sheriff, or someone suitable, to bring the person before the court. The delegated officer may call on anyone to assist him in serving the warrant. If a person refuses to render assistance or interferes, he is subject to a fine of $50. The apprehended person may be placed in custody pending the date of hearing. A notice is issued to anyone the court determines should have such notice.

The judge examines, without jury, any witnesses he desires, including not more than two medical witnesses. The hearing may be held at any place within the county. The judge makes the decision of sanity or insanity and issues the commitment order if necessary.

Oregon.—A notification is submitted to the county judge who issues an order for the person to be brought before him. Two or more competent physicians are appointed to examine the person. If they find that the person is insane and the judge so agrees, the judge issues a commitment order.

Rhode Island.—A complaint is filed with any justice or clerk of the district court. The court issues a warrant for the apprehension of the alleged insane person. He may be brought before the court or its clerk. Whenever the complaint is accompanied by the certificate of two practicing physicians declaring that the person cannot be brought before the court without serious prejudice to his welfare, the court may hold the examination elsewhere most conducive to the health and comfort of the person to be examined. The court cannot commit a patient without a certificate of two physicians that the person is insane or in need of restraint.

South Carolina.—The affidavit is made to the judge of the county probate court and the judge makes an investigation. He summons two licensed physicians to examine the person and certify their findings to the judge. The judge cites the person and guardian or relative and other witnesses, and holds a hearing. The judge makes the decision of sanity or insanity and issues an order of commitment if necessary.

An appeal may be taken to the court of common pleas for a jury trial.

The superintendent of a hospital is not required to appear in court as a witness. Such testimony may be taken by a commission.

Tennessee.—In all counties with a probate court all inquisitions are made by the judge of the court. In other counties the judge or chairman of the county court makes the inquisition.

The complaint is filed with the clerk of the court. The clerk issues process to bring the person before the court. A friend or relative may bring the person, otherwise the sheriff must do so. Before the hearing, the judge may appoint a guardian *ad litem* who must be present at the hearing. The court may hold the hearing at the county seat unless the judge deems it best to meet at or near the person's residence.

Two reputable physicians must make separate personal examinations and each submit a certificate to the court.

The judge issues the commitment order if he agrees that the person is insane.

Utah.—The application is filed in the district court. The judge may then examine the applicant under oath and, if satisfied, issue a warrant to the sheriff to bring the alleged person before him, or the judge may dispense with such an order. The judge summons two licensed physicians to make an examination and certify whether or not the person is insane. The judge decides whether or not to commit the person.

Vermont.—The petition is filed with the selectmen of the town who institute a court of inquiry before the probate court. This court holds a hearing, then notifies the person and the State's attorney. The judge may order the person removed to the hospital for safekeeping pending a hearing. The State's attorney must prove or disprove that the person is liable to be State supported. The certificate of two legally qualified physicians must be presented to the court showing that a personal examination was made within 5 days previously. The judge may commit the patient if he agrees that the person is insane.

An appeal over this decision may be made to the court and a jury of 12 is then called. The jury hears the evidence, and the judge must abide by the decision of the jury and discharge the person who is found to be sane, or commit him if insane.

Washington.—An application is filed with the judge of the superior court who may order the sheriff to bring the person before him and there be examined by two witnesses and two reputable physicians. The accused may demand a jury trial. If no trial is demanded the judge may commit the person on the certificate of the two physicians.

Wisconsin.—Three citizens must apply to the judge of a county court or district court for a judicial inquiry as to the mental condition of the person believed to be insane. One of the three citizens must be the nearest relative or friend or the one with whom the person resides.

The judge usually requests that the person be brought before him in court and then appoints two disinterested physicians to examine the alleged insane person. The physicians are required to be registered on a list kept by the county judge. The person may or may not be notified and the physicians may or may not examine the person in the presence of the judge, but they must make a written report to the judge.

If the person is reported to be insane the judge then sets a date for a hearing. The judge may act on the report of the physicians during the hearing and commit the person, or he may make further investigation before giving his decision.

The person, or any friend or relative, may demand a jury trial. The jury trial can be held only in the presence of the person, his counsel, friends, and witnesses.

The financial condition of the person is decided during the hearing or trial.

4. HEARING BY THE CLERK OF THE COURT WITH AN EXAMINATION BY TWO OR MORE PHYSICIANS

North Carolina.—The affidavit is filed with the clerk of the superior court. The clerk issues a warrant to the sheriff to produce the person, unless the clerk believes this would be injurious to the person.

When the person is brought to court the clerk calls the county physician or another licensed and reputable resident physician to examine the person.

In case of absence of the clerk any justice of the peace may conduct the hearing, but the testimony of at least one physician is always required. The report is made to the clerk of the court. The clerk makes the decision and orders commitment when deemed necessary. The justice of the peace may order temporary commitment in an emergency, but must obtain an order from the clerk of the court within 30 days.

The clerk may hold the hearing at the place of residence of the person when it would be injurious to the person to bring him into court.

The clerk investigates the financial condition of the person and his relatives.

Mississippi.—The clerk of the court orders the inquiry and calls a jury of six freeholders. Jury trial is mandatory.

5. HEARING BY A COMMISSION IN LUNACY APPOINTED BY THE JUDGE OR ORDINARY

Georgia.—This State has unusual commitment laws. A petition is filed with the county ordinary. He serves 10 days' notice on the nearest three adult relatives of the person if there are such in the State. This notice may be waived by the relatives when one of them makes a written affidavit that the person is violently insane. This affidavit must be verified in writing by a practicing physician who is appointed by the ordinary.

The ordinary appoints a commission of three reputable persons, two of whom must be practicing physicians, resident of the same county as the alleged person, and one the county attorney or an attorney appointed by the ordinary. This commission is required to inspect and examine the person and to hear witnesses. The verdict must be unanimous.

If the county has no county attorney or county physician the ordinary forms a commission of six reputable citizens, one of whom must be a physician. This commission conducts an examination and makes a written report to the ordinary. The verdict of the commission must be unanimous before the ordinary may commit the patient to a hospital.

The person may appeal within 4 days to the superior court for a trial by jury.

Colorado.—When the complaint is filed with the county court, the judge orders that a copy of the complaint be given to the person alleged to be insane, and the person is taken into custody pending the legal determination of his condition. He is confined in a hospital or other suitable place, designated by the judge, for examination, observation, and diagnosis.

The lunacy commission consists of two resident licensed physicians of reputable character. They hold office during the pleasure of the judge.

The lunacy commission is notified by the judge. The person complained of has a right to be present at all meetings of the commission and the court must appoint an attorney to represent him. If the two commissioners do not agree the court must appoint a third one. The financial position of the patient is examined by the commission. A sworn report of the mental and financial condition of the patient is made to the court by the commission. The court issues an order approving the report.

Virginia.—A complaint is filed in a circuit or corporation court or to a justice of the peace and a warrant is issued therefrom. The judge may issue a warrant without this complaint. The judge then appoints two physicians, one of whom is the family physician if there is such, to form a "commission of inquiry" which includes the judge. If the two physicians do not agree, a third is called.

The judge orders the commitment if the person is adjudged insane.

Pennsylvania.—An application is made to a court of common pleas or the judge thereof. The judge may appoint a commission to make inquiry and report to the court. The commission consists of two qualified physicians and a lawyer. The court then holds a hearing in any place directed by the court. The court may or may not require the presence of the person. If the commission finds the person to be mentally ill and a fit subject for admission to the hospital and the judge approves, he issues an order for the person's admission.

Wyoming.—Each district judge appoints a lunacy commission for each county to act during the pleasure of the judge. The commission consists of two disinterested, reputable resident physicians, one of whom, if available, is a psychiatrist not connected with a public or private institution for the care of the insane. If only one physician is available the judge appoints a reputable, disinterested attorney.

A petition is filed in court and the clerk issues an order to the sheriff or peace officer to take the person into custody if necessary. The lunacy commission proceeds to examine the person. A hearing is then held in open court and the commission of two sits in lieu of a jury. The person is notified but he need not be present if the judge so determines.

The hearing may be held before a jury when the person or a relative or friend demands a jury trial, or the lunacy commission fails to make a finding. The certificate of at least one physician is required to be presented to the jury.

The commission or jury also decides on the financial condition of the person.

The judge may set aside the findings of the commission or the jury and order a rehearing.

6. HEARING BY A COMMISSION IN LUNACY ESTABLISHED BY LAW WITH THE JUDGE OF THE COURT AS CHAIRMAN OF THE COMMISSION, OR AS THE ONE TO RECEIVE THE REPORT OF THE COMMISSION AND ACT UPON IT

North Dakota.—In each organized county there is a board of three commissioners of insanity. The county judge is a member and chairman of the board and the two others are appointed by the board of county commissioners for 2 years' service. One of them must be a reputable practicing physician and the other a reputable practicing attorney. In case of their absence the county judge may call another physician or attorney to act in the same capacity. The State's attorney may act in place of the judge when he is absent.

All applications for commitment are filed with the commissioners of insanity. The commissioners investigate and may order the person to be brought before them. They may issue a warrant for the person and provide suitable custody for him pending the investigation. The board may or may not require the presence of the person at the hearing. If the person is not brought before the

board a physician is sent to examine him. This physician may or may not be a member of the board.

The board decides the question of sanity or insanity and if the person is found insane a warrant is issued for the transportation of the person to the hospital.

The financial ability of the person and relatives is determined by the board.

Oklahoma.—In each organized county there is a board of three members called commissioners of insanity. The county judge is a member and chairman of the board. The two others are appointed by the county commissioners and one is a respectable, practicing physician and the other a respectable, practicing attorney. One is appointed for a year and one for 2 years. In case of absence the judge may call any respectable physician or respectable lawyer to act as a member of the board.

All applications for commitment are filed with the board.

The commissioners investigate and may dispense with the presence of the person during the hearing. In case of absence of the person a physician is appointed to visit and examine the person and submit a written report to the board. This physician may or may not be a member of the board.

The board has the power of disposition of the person by commitment or discharge or other arrangements.

South Dakota.—In each county there is a board of commissioners called the board of insanity, consisting of the county judge, the State's attorney, and a reputable physician, appointed by the board of county commissioners.

Application is made with the judge who is chairman of the board. A warrant is issued by the chairman or he may await the full action of the board.

The board investigates and may order the person to be brought before it or may dispense with the presence of the person.

The physician member of the board makes a personal examination and submits a report to the board. Another physician may be appointed by the board in any doubtful case.

The board makes the decision of the mental condition and the financial ability of the person and issues a commitment order if necessary.

District of Columbia.—In June 1938 a new law was enacted to abolish the mandatory jury trial for commitment. It is interesting to note that this forward step was made with great reluctance and the judge is still empowered to call a jury on his own motion.

A commission on mental health has been established to examine the alleged insane person and inquire into the affairs of those legally liable for the support of the person.

The commission must be drawn from a panel of nine bona fide residents of the District of Columbia who have resided there for a continuous period of at least 3 years immediately preceding the appointment.

Eight members of the panel must be physicians who have had at least 5 years' experience in the diagnosis and treatment of mental disease, and the ninth must be a member of the bar of the District Court with at least 5 years' practice in the District of Columbia.

The eight physician members are so assigned by the justice of the District Court that two will serve together for 3 months in each calendar year. The lawyer serves full-time on an annual salary and is chairman of the commission.

The commission may examine the person in the commission's central office, or at the hospital, home, or wherever the person may be confined.

The petition must be accompanied by affidavits of two or more responsible residents of the District that the person is believed to be of unsound mind.

A report is made by the commission to the justice of the court and a copy of this report is served on the person, his guardian, or attorney, together with notice that he has 10 days within which to demand a jury trial, or hearing by the court.

The judge determines the sanity or insanity of the alleged person and retains the power to dismiss the petition and commission's recommendation for commitment when he is satisfied that the alleged insane person is of sound mind. In the case of a trial by jury the verdict of the jury is final. (In spite of the advances made in the present law, it is interesting to note how the law still clings to its traditions.)

7. COMMITMENT BY A COMMISSION IN LUNACY EMPOWERED WITH JUDICIAL AUTHORITY

Delaware.—The commitment law in Delaware is unique among the States. The board of trustees of the State hospital is empowered with judicial authority.

The patient is examined by two physicians who are residents of the same county as the alleged insane person. A certificate is signed by the physician and this certificate, together with the petition, is sent to the superintendent of the hospital. The patient is placed in the psychiatric observation clinic at the State hospital. A report is issued by the superintendent to the board of trustees if the patient requires continued care in the State hospital. The board of trustees may call a jury of six if a jury trial is demanded by any person related or connected by marriage to the patient. The board acts on the decision of the jury. When a jury trial is not requested the board of trustees appoints a commission of two qualified and licensed physicians who make an examination and submit a written report to the board of trustees. The board is empowered to act on this report. The person always has the right of appeal to the chancellor of the State.

An interesting provision in the law is that no person shall be committed to the State hospital upon the certificate of any physician living in Wilmington unless the certificate is signed by at least one of the physicians of the State hospital.

Iowa.—There are two methods of commitment in Iowa.

1. There is a commission of insanity in each county. The commission consists of three members. In those counties where the district court is held in two places there are two commissions.

Each commission consists of the clerk of the district court, one reputable physician in actual practice and one reputable attorney in actual practice. The two latter must reside as near the court as practicable. The clerk's deputy may act in the clerk's absence. In the case of absence of one or both of the other two members substitutes of the same kind may serve instead.

The commission has jurisdiction over all applications for commitment to the State hospitals.

The application is filed with the commission (clerk of the court) which may issue a warrant to any peace officer of the county. The commission may provide for the custody of the person pending investigation. Witnesses may be subpoenaed by the commission and hearings held. The person must be present unless it is certified that it would be injurious to him or attended with no advantage. The alleged insane person may be represented by any citizen, or relative, or by counsel.

The commission appoints a physician, who may be either its own member or another regular practicing physician, to examine the person and to certify his findings to the commission.

The commission has judicial power to commit the patient or discharge him.

The commission may assign the sheriff or some other person to accompany the patient to the hospital under a warrant. A suitable friend or relative on request has preference over the sheriff to accompany the patient and is entitled to travel expenses, but no fees. No female may be taken to the hospital without the attendance of a woman or a near relative.

Any person may appeal from the commission to the district court within 10 days and the county attorney appears for the informant. A jury trial may be held.

2. The State Psychopathic Hospital has a special commission in lunacy consisting of the medical director, assistant medical director, and one other member of the medical staff, and it has the powers and duties of the county commission of insanity.

Nebraska.—In each county there is a board of three commissioners called the commissioners of insanity. The clerk of the district court is ex officio a member of that board and serves as clerk of the board. The other members are appointed by the judge of the district court and one must be a respectable, practicing physician and the other a respectable, practicing lawyer and must reside as convenient as may be to the county seat. The members are appointed to serve one year. The district judge may act in the absence of one member or he may appoint a physician or lawyer in the absent member's place.

All applications for admission to a mental hospital or a place for safekeeping are filed with the commission.

The commissioners investigate and may require the person to be brought before them and may issue a warrant therefor. They may dispense with the presence of the person if it appears that it would be injurious or of no advantage to the person. The commissioners appoint a regular practicing physician to see the person and make a personal examination. He may or may not be a member of the commission.

The board of commissioners has the power to discharge the person or to order his commitment to a hospital.

West Virginia.—A complaint under oath is made to the clerk of the county court. The clerk issues a warrant to the sheriff or relative to bring the person before the county mental hygiene commission which consists of the president of the county court, the prosecuting attorney, and the clerk of the county court. The commission may act without a complaint.

The commission appoints a guardian *ad litem* to represent the suspected person. The witnesses must include two reputable physicians. The physicians must separately examine the person and make a sworn statement of their findings. The commission decides whether the person is a lunatic or is sane. If he is considered to be a lunatic he is committed to a hospital or given to the care of relatives or friends.

If a person has been found by the commission to be sane, anyone who disagrees may apply to the circuit court for a court examination of the person. The court issues 5 days' notice to the suspected person and then examines into his state of mind and determines his condition.

GENERAL COMMENT

This summary of commitment laws reveals somewhat hopeful progress in the movement to modify a legal procedure that originally was designed only for those who were accused of breaking the law. The public trial by jury has almost disappeared, but a great deal more needs to be done. The commitment laws are still in the stage of

the early automobile. The first automobile was actually a buggy with an engine set in it. It took many years of the organized effort of numerous engineers to bring about a vehicle that was no longer a horseless buggy. Patterned after the old criminal law, it has taken time and effort for even a few States to develop commitment laws on the basis of early treatment without degrading the patient with a criminal taint.

With voluntary admission or the commitment procedure of New York, Rhode Island, or Delaware, neither the patient nor the family feels the humiliation that is concomitant with the usual form of court procedure in many States.

No matter how much the fact may be emphasized that entering a mental hospital is not a disgrace, the patient and his family will always feel it so as long as public court commitment is required.

The old fears of "railroading" and malicious detention may be dismissed in any State that maintains a proper inspection system for public and private institutions.

The certificates of two licensed, reputable physicians that a person requires treatment in a mental hospital should meet the requirements of the law. The judge's approval of the medical certificates should be the only court action necessary if and when court action is demanded by the patient or someone in his behalf.

It should always be remembered that hospitalization does not mean deprivation of civil rights. Court action for the appointment of a guardian may require more information for the court.

Perhaps the legal attitude changes only when hospitals reach a certain standard. In other words, until a State provides reasonably good care for mental patients the demand for modification of commitment laws will not arise. It is a fact that the States with the best mental hospitals have the most favorable commitment laws. The District of Columbia is an exception to the above; it has a good hospital, but the citizens of the District of Columbia have no hand in making the laws by which they are governed.

Even the best of the present laws harks back to the old conceptions of "insanity," and Pennsylvania is the only State with the distinction of having placed its special laws on the high plane of illness and treatment. The words "mental illness" and "mentally ill" have replaced "insanity" and "insane" in the statutes. This should be the goal of all those interested in the facilities for early and adequate treatment of the patient.

TRANSPORTATION TO THE HOSPITAL

The arrangements for transportation of the patient to the hospital after commitment is ordered are of definite importance to the welfare of the patient. He may be sent to the hospital in the manner of

a criminal under arrest or may be taken there as one who is ill and accompanied by trained personnel.

Only 16 States specify in the law that an attendant from the hospital is required to call at the home or place of detention to accompany the patient to the hospital.

Twenty-six States legally require a female patient to be accompanied by a female attendant appointed by the court or sheriff. It may be taken for granted that in practically all cases a female friend, or a near relative or a female attendant accompanies a female patient.

Twenty-one States give preference to a friend or relative to accompany the patient at State or county expense.

Bevis[4] made a study of the method of 18,549 admissions of patients in 26 State hospitals in various sections of the United States. Over 12,000 patients, or 64 percent of all the admissions, were taken to the hospitals by the sheriff, his deputies, or police officers. Twenty-nine percent of these patients were held in jail pending transportation to the hospital. Only 16 percent were brought to the hospital by hospital employees.

RECOMMENDATIONS

The laws for admission and commitment of a mental patient to a mental hospital should include the following requirements:

1. The emergency admission of a patient to the hospital for observation and treatment on the written recommendation of a health officer or a reputable, licensed practicing physician who is registered as a qualified examiner. A definite reason for the emergency should be stated.

The requirements for a qualified examiner should be that he is a graduate of an incorporated medical college, has been in active practice at least 2 years and is registered to practice medicine in the State and also registered with the court of the county in which he resides.

Provision for emergency admission of a vagrant or friendless person by the written request of a peace officer, county official, or physician should be provided.

2. Special forms should be prescribed by the State hospital administrative authorities so that the applications will be uniform throughout the State.

3. Emergency admission should be for 30 days with unlimited extension of treatment when there is no written request by the patient or anyone in his behalf for a discharge.

The superintendent should be authorized to discharge or release such a patient at any time he deems it to be advisable.

4. The question of liability for reimbursement for care should not be decided until after the patient is admitted to a hospital.

5. A copy of the emergency admission order should be delivered to the judge of the county court for his information but not approval.

6. For the admission of a patient when there is no definite emergency there should be a verified petition by any reputable citizen of the county filed with the county court or court of record, together with a certificate signed by two

[4] Pre-admission Care and Methods of Transfer of Psychiatric Patients. By W. M. Bevis. (Paper read before the American Psychiatric Association, 1937.)

qualified medical examiners who have examined the patient within 10 days of the date of filing the certificate. The verified copies of the petition and the medical certificate should be taken with the patient to the hospital.

7. Court commitment may be necessary to hospitalize and detain a mentally ill person against his will, or against the will of someone in behalf of the person. Certain measures are necessary to meet the constitutional rights of the individual.

The patient or someone in his behalf may demand a court hearing or jury trial before he is sent to a hospital or after he has been admitted to the hospital for temporary treatment.

The judge of a court of record of the city or county should be empowered to appoint at State expense two qualified medical examiners to examine the person at the home or hospital or at the place most conducive to the health and comfort of the person. The opinion of the examiners should be submitted to the judge on special forms that are approved by the State mental hospital administration. The judge should have authority to set a date of hearing, call witnesses, and have the person brought before him if he deems it advisable. A medical certificate that it is inadvisable to have the person appear before the court should be sufficient evidence for the judge.

The notice of the hearing should be served on the nearest relative or friend or on the person himself in the discretion of the judge.

8. There should be legal provision for a rehearing within 30 days after legal commitment. When a person who has been duly committed to a mental hospital, or when anyone in his behalf is dissatisfied with the decision of the judge, there should be a way to a rehearing of the case upon petition to a superior court. If the petition is approved the case would then be decided by jury in the legal manner prescribed by the State. However, there should be the proviso that anyone, except the committed person or his nearest relative or friend, who makes the appeal to the State supreme court for the rehearing should make a deposit or give bond for the payment of the costs of the rehearing and trial. The verdict of the jury should be final.

It should be remembered that a writ of habeas corpus is always obtainable on proper representation.

Progress is indeed slow in the general public's understanding of the problems of the mentally ill. Every effort should be made to hasten the time when the mentally ill will be treated as hospital patients and not as criminals and the jail will no longer be the usual receiving center for the most serious cases.

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